



Appeal Decision

Hearing held on 23 July 2024

Site visit made on 23 July 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2024

Appeal Ref: APP/W1850/X/23/3323923

Redwood Orchard, St. Michaels, Tenbury Wells, Worcestershire, WR15 8TL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Ms Brigid Eakins against the decision of Herefordshire Council.
 - The application ref 223860, dated 16 November 2022, was refused by notice dated 11 January 2023.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is described as the proposed siting of a mobile home in accordance with the use allowed under the extant certificate 130612/U.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Ms Brigid Eakins against Herefordshire Council. This application is the subject of a separate decision.

Procedural Matters and Background

3. I have taken the description of the proposed use from the Council's decision notice as it more succinctly describes the proposal for which the certificate is sought. Neither the appellant nor the Council raised any objections to this approach.
4. The appeal site has a long planning history associated with it, with the most relevant applications, permissions, and appeals as follows. On 21 June 2013 a LDC under section 191 of the Town and Country Planning Act 1990 ("the 1990 Act") was granted¹ by the Council. The certificate confirmed that the "*Use of the land for the siting of a single mobile home*" was lawful ("the 2013 LDC").
5. The Council sent a letter dated 23 January 2014 to the appellant that was titled "Application Not Required". This letter stated that permission was not required to replace the existing mobile home on the site with a "log cabin" ("the 2014 ANR letter"). The appellant subsequently replaced the mobile home which benefitted from the 2013 LDC with a "log cabin" on the site.

¹ Council Reference: 130612/U

6. On 15 December 2014 an application² for a LDC under section 191 of the 1990 Act was refused by the Council. The application sought a certificate for the *"Use of the land as a caravan site for the siting of one residential caravan"*. An appeal³ against the Council's refusal to grant a LDC was subsequently dismissed on 14 June 2016 following a two day inquiry ("the 2016 LDC appeal").
7. An enforcement notice was issued by the Council on 11 April 2017 ("the notice") which alleged the *"Erection of a dwelling, known as 'the log cabin', without the benefit of planning permission. Change of use of land from agricultural to mixed use of residential and agricultural, without planning permission"*. An appeal⁴ against the notice was dismissed on 16 August 2018.
8. An appeal⁵ against the Council's refusal to grant a LDC under section 192 of the 1990 Act for the proposed *"Use of the land for the siting of a caravan for the purposes of human habitation throughout the year as a person's sole or main place of residence"* was also dismissed on 16 August 2018 ("the 2018 LDC appeal").
9. On 25 October 2022 an appeal⁶ against the Council's refusal to grant an LDC under section 192 of the 1990 Act was allowed ("the 2022 LDC appeal"). The certificate confirmed that *"The proposed siting of a caravan which accords with the legal definition of a caravan and its use ancillary to agriculture would not constitute development requiring planning permission"* was lawful.
10. On 27 June 2023 an appeal⁷ against the Council's refusal to grant an LDC under section 192 of the 1990 Act was allowed ("the 2023 LDC appeal"). The certificate confirmed that *"The siting of a caravan for a use ancillary to the agricultural use of the land"* would be lawful.
11. This appeal arises following a further application for a LDC which was refused by the Council, the details of which are contained in the banner header above. The application sought to establish whether the siting of a mobile home in accordance with the use allowed under the 2013 LDC would be lawful.

Main Issue

12. The main issue is therefore whether the Council's decision to refuse to grant a lawful development certificate was well founded.

Reasons

The 2013 LDC

13. Given that the appeal application seeks to establish whether the siting of a mobile home in accordance with the use allowed under the 2013 LDC would be lawful, it must first be established what use was allowed. The first schedule of the 2013 LDC describes the use which was found to be lawful within the meaning of section 191 of the 1990 Act, which is described as the *"Use of the land for the siting of a single mobile home"*.

² Council Reference: P14232/U

³ APP/W1850/X/15/3002415

⁴ APP/W1850/C/17/3175427

⁵ APP/W1850/X/17/3187434

⁶ APP/W1850/X/22/3295616

⁷ APP/W1850/X/22/3310231

14. The decision notice stated that the reason for issuing the LDC was *"On the balance of probability, the local planning authority is satisfied that the information submitted in support of the application demonstrates that a mobile home has been stationed on the land for a continuous period in excess of ten years. However, this certificate does not permit the permanent residential occupation of the mobile home as the applicant has failed to demonstrate occupation for a continuous ten year period prior to the submission of the application"*.
15. The appellant contends that as the reasons for issuing the LDC state that the *"permanent residential occupation of the mobile home"* is not permitted, it therefore implies that the *"temporary"* residential occupation of the mobile home would be lawful. However, the issue of whether the 2013 LDC permitted any residential use has already been the subject of two previous LDC appeals. In both the 2016 and 2018 LDC appeals, the appointed Inspectors concluded that no residential use was granted by the 2013 LDC, which did no more than certify that the siting of a mobile home on the land is lawful. I find no reason to disagree with the findings of the previous Inspectors for the following reasons.
16. The appellant confirmed at the hearing that the 2013 LDC application had been made seeking an LDC to certify that a mobile home had been sited on the land and occupied for residential purposes (Use Class C3) for a period in excess of 10 years, and therefore was lawful. It is clear that whilst the Council were satisfied that the mobile home had been sited on the land for in excess of ten years, residential occupation of it for a continuous period of at least ten years had not been demonstrated. In my view, if the Council considered that the mobile home had not been used for residential purposes for the requisite period, or not used for that purpose at all, then the application should have been refused.
17. Nevertheless, for reasons which are not entirely clear, the Council instead chose to issue a certificate for the *"Use of the land for the siting of a single mobile home"*. No use of the mobile home is stipulated and therefore no use of the mobile home is certified by the 2013 LDC. The absence of any specific use being identified is important, as mobile homes are commonly stationed on land for non-residential purposes, and in certain circumstances mobile homes may not constitute development at all. It therefore does not follow that the siting of a mobile home must always result in an associated residential use.
18. With regards to the appellant's reference to a *"temporary"* residential occupation of the mobile home, it has not been made clear what the appellant considers to be temporary in terms of the frequency or duration of any residential occupation. In any event, the use of a mobile home for primary residential purposes would be unlikely to be considered ancillary to the lawful use of the land, and therefore would constitute a material change of use. The 2013 LDC does not refer to any *"temporary"* residential use and it does not certify that any form of residential use would be lawful.
19. The 2013 LDC therefore does nothing more than certify that a mobile home can be stationed on the land and not be subject to enforcement action, with no use being granted by the 2013 LDC.

Lawful Use of the Site

20. At the hearing the main parties agreed that the lawful use of the land is agricultural. Given that the 2013 LDC did not grant any use, the lawful use of the appeal site would have remained agricultural. Following receipt of the 2014 ANR letter, the appellant removed the mobile home from the land and replaced it with a "log cabin" which she subsequently occupied.
21. The siting of the "log cabin" and residential use of the land resulted in the issuing of the notice in April 2017, which alleged the erection of a dwelling and the change of use of the land from agricultural to a mixed use of residential and agricultural. Whilst I acknowledge that the appellant only replaced the mobile home with the "log cabin" on the strength of the 2014 ANR letter, it was nevertheless found to not meet the definition of a caravan and was in fact a building operation.
22. The appeal against the notice was dismissed and the requirements of the notice upheld. The notice required, amongst other things, that the use of the land for residential purposes ceased and thus the land returned to agricultural use. In the absence of any subsequent grant of planning permission or issuing of a LDC permitting a residential use of the land, I agree with the parties that the lawful use of the land remains agricultural.

Proposed Siting of a Mobile Home

23. An application under S192(1)(a) of the 1990 Act seeks to establish whether any proposed use of buildings or other land would be lawful. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
24. The appeal application seeks to establish whether the siting of a mobile home in accordance with the use allowed under the 2013 LDC would be lawful. For the reasons already set out above, no use was granted by the 2013 LDC. It therefore follows that the lawful use of the land allowed under the 2013 LDC must have remained as agricultural.
25. The Council consider that as the mobile home at the heart of the 2013 LDC was removed from the land in around 2014 and not subsequently replaced with another, the siting of a mobile home on the site would no longer be lawful. I do not agree with that assertion, not least because the siting of a mobile home for a use ancillary to the agricultural use of the land would be lawful as established in the 2022 and 2023 LDC appeals.
26. What is key is the proposed use of any new mobile home. The appellant has provided no information to demonstrate that the mobile home would be used for purposes ancillary to the lawful agricultural use of the land. Instead, the appellant's submissions have focused on a "temporary" residential use of the proposed mobile home. The appellant's agent confirmed at the hearing that, in the appellant's view, should this appeal be allowed and a LDC issued, it would permit a "temporary residential use" of a mobile home at the site.
27. As stated above the 2013 LDC does not permit any residential use, and therefore the proposed "temporary residential use" of a mobile home would not be in accordance with the use allowed under the 2013 LDC. The appellant has

therefore not demonstrated, on the balance of probabilities, that the proposed development would be lawful. Thus, the appeal must fail.

Conclusion

28. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed siting of a mobile home in accordance with the use allowed under certificate 130612/U was well-founded and the appeal fails. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

David Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Graham Lea	Town and Country Planning Partnership Ltd
Brigid Eakins	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Emma Aram	Senior Planning Officer
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INTERESTED PARTIES:

Peter Bell	Friend of the appellant
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